IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

NO. _____ 76-1586

AMY EVERSTON JONES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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1. The Petitioner, Amy Everston Jones, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in this case on April 12, 1977.

(a) OPINIONS BELOW

The opinion of the Court of Appeals below was reported. (Appendix A, A. 1). The opinion of the United States District Court for the District of Maryland was entered on May 13, 1976 and is unreported. (Appendix B, A. 13).

(b) JURISDICTION

The judgment of the Court below was entered on April 12, 1977. The jurisdiction of this Court is involved under 28 U.S.C. 1254(1).

(c) QUESTION PRESENTED FOR REVIEW

Whether or not a check issued by a computer without the authority of the drawer is a "falsely made, forged, altered, counterfeited or spurious" security within the meaning of the exclusionary clauses of Title 18, United States Code, Sections 2314 and 2315?

(d) STATUTES INVOLVED

1. Title 18, United States Code, Section 2314 (Appendix C, A. 29).

2. Title 18, United States Code, Section 2315 (Appendix C, A. 29).

(e) STATEMENT OF THE CASE

On December 9, 1975, the United States Attorney for the District of Maryland charged the Petitioner, Amy Everston Jones, with five counts of transportation in interstate commerce of stolen, converted or fraudulently obtained securities valued at more than $5,000 in violation of Title 18, United States Code, Section 2314 and with five counts of receiving, selling or disposing of these securities knowing the same to have been stolen, converted or taken by fraud, in violation of Title 18, United States Code, Section 2315. On January 7, 1976, the Petitioner filed a motion to dismiss alleging that the exclusionary clause within each respective section precluded prosecution. On February 17, 1976, a hearing was held before the Honorable R. Dorsey Watkins, of the United States District Court for the District of Maryland. On May 13, 1976, a memorandum opinion and order granting the motion to dismiss was filed and on May 17, 1976, the indictment was ordered dismissed. On June 16, 1976, a notice of appeal was timely filed by the United States of America and on December 10, 1976 argument was held before the United States Court of Appeals for the Fourth Circuit. Robert A. Rohrbaugh, an Assistant United States Attorney for the District of Maryland, presented the case for the United States of America. Petitioner did not retain counsel and presented no argument. On April 12, 1977 the Court of Appeals reversed the order of the District Court.

(f) STATEMENT OF FACTS

The securities at issue are five checks payable to the order of "A.L.E. Jones", drawn on the Royal Bank of Canada against the accounts of Inglis, Limited, a Canadian appliance firm. It is alleged that these checks were made in Canada and forwarded to the Petitioner in Maryland where they were deposited in her Maryland bank account.

On the hearing for the motion to dismiss, Edward McCormack, Comptroller and Assistant Treasurer of Inglis, Limited (hereinafter referred to as Inglis), testified to the manner in which checks were issued by his corporation. Inglis, through its affiliation with the Whirlpool Corporation, purchases quantities of household appliances and payment is initiated by an accounts payable system in which supporting documents such as invoices are matched in the accounts payable department by the invoice audit clerks. Invoice audit clerks collect and record invoice numbers, the amount due and the vendor code numbers on an accounts payable distribution slip. The accounts payable distribution slips, along with the supporting documents, are then transferred to Andrea Lamothe, an accounts payable audit clerk, who is responsible for checking that the data placed on the accounts payable distribution slip is correct and agrees with the supporting documents. Miss Lamothe then stamps an accounts payable register number on the upper right hand corner of the document and the material then proceeds to data processing where they are grouped in batches of a hundred. At that point, keypunch operators, using the information contained on the accounts payable distribution slip, keypunch data processing cards. The keypunch cards and attached documents are placed on a table where a data control clerk obtains them for processing within the

computer. The computer produces a balancing report and the documents are then returned to Miss Lamothe or other individuals within the accounts payable department. Sometime later, usually between 15 and 30 days from the date that the cards are keypunched, the accounts payable department issues an instruction to the computer to create a check run.

On September 3, 1975, a new account for "A.L.E. Jones" was established by Miss Lamothe at the direction of Michael Everston, her supervisor. This account, number 99894, was thereafter entered into the computer's memory so that any order to pay account 99894 would automatically result in the issuance of a check payable to the order of "A.L.E. Jones." On five occasions between September, 1975, and November, 1975, certain accounts payable distribution slips, bearing the account number 99894, were substituted for valid distribution slips ordering payments to the Whirlpool Corporation, account number 99900. The data on these substituted accounts payable distribution slips was routinely transferred to keypunch cards, fed into the computer and stored in its memory. In due course, when commanded to process a check run, the computer automatically printed five checks payable to the order of "A.L.E. Jones" which had been intended to be made payable to the order of Whirlpool Corporation. These five checks were then forwarded to the petitioner and deposited in her account in Maryland.

These five checks, as with all checks issued by the computer, bear the facsimile signatures of Edward McCormack and Jean Whitley. These signatures were placed on the checks by a signature plate which is attached to a machine through which the checks are run by the computer.

(h) REASONS RELIED ON FOR THE GRANTING OF THE WRIT

The federal statutes under which petitioner was indicted [18 U.S.C. 2314, 18 U.S.C. 2315] expressly state their inapplicability "to any falsely made, forged, altered, counterfeited or spurious representation" of a foreign security.[1] The five checks that form the substance of the indictments against petitioner were drawn on the Royal Bank of Canada against the account of Inglis, Limited, a Canadian corporation. These checks were printed entirely by Inglis' computer, complete with authorized facsimile signatures. The amounts on each check were equal to legitimate business obligations owed to the Whirlpool Corporation, a United States manufacturer, but, as a direct result of employee tampering with input data, these five checks were made payable to the order of "A.L.E. Jones" instead of "Whirlpool Corporation."

Both lower courts agreed that the phrase "falsely made, forged, altered, counterfeited or spurious" referred to the crime of forgery, *Greathouse v. United States*, 170 F.2d. 512, 514 (4 Cir. 1948), and that the term "forgery" should be viewed in light of its common law meaning, *Gilbert v. United States*, 370 U.S. 650, 655 (1962). Therefore, whether these five computer-issued checks can be deemed forgeries is the question and one which the District Court of Maryland considered novel in the case law. Additionally,

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[1] Except for minor differences in punctuation, the exclusionary language is the same in both statutes. (See Appendix C, A. 29, last paragraph of each statute).

as noted by the Court of Appeals in its opinion (footnote 6), the use of computers in crime is rapidly increasing.

Therefore, since the question presented to this Court is novel and likely to appear with increasing frequency in this age of computers, a resolution of the question at this time would avoid inevitable conflicts among the circuit courts and, more specifically, as in the instant case, between the circuit courts and the district courts. Furthermore, even a cursory examination of the lower courts' opinions reveals that the Court of Appeals in reversing the District Court avoided key arguments made by the district court judge. Petitioner asserts that the Court of Appeals, by not adequately responding to the opinion of the District Court, "so far departed from the accepted and usual course of judicial proceedings"[2] that review by this Court is warranted.

The initial error by the Court of Appeals lay in its mistaken belief that the holding of the District Court was premised on the view that the name of the fictitious payee on the checks did not constitute a false statement.[3] Using this erroneous assumption, the Court of Appeals then disagreed with this view and held the checks to be genuine instruments containing false statements.[4] However, in actuality the District Court stated that "even assuming that

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[2] Supreme Court Rules, Rule 19(b).

[3] *United States of America v. Amy Everston Jones*, No. 76-1815, United States Court of Appeals for the Fourth Circuit, (opinion), page 12, (See Appendix A, A.1).

[4] *Id.*, at p. 13 (See Appendix A, A.1).

the mere presence of the payee's name on the instrument" can be considered a true or false assertion, "the rule as to falsity of content has no application where the documents were in fact falsely made."[5] This statement, which the Court of Appeals completely avoided, formed the basis for the decision of the District Court. Indeed, if the Court of Appeals had realized what the District Court had – that an instrument could be both falsely made and contain false statements, then the Court of Appeals would not have reversed the District Court. For, once one realizes that these computer-issued checks contain both the making of a false writing and false statements, an argument can no longer be advanced that these instruments are only the product of a fraud or false pretense. While these checks arguably may have resulted from a fraud or false pretense (a proposition that the District Court did not accept[6]), they nevertheless were also the product of a forgery due to their being falsely made.

The second error in the opinion of the Court of Appeals becomes evident when that Court does not attempt to explain its disagreement[7] with the argument advanced by the District Court that the computer-produced forgery is the

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[5] *United States of America v. Amy Everston Jones,* Criminal No. W-75-0854, United States District Court for the District of Maryland, (opinion) page 10. (See Appendix B, A. 13).

[6] *Id.*, at p. 10 (See Appendix B, A. 13).

[7] Opinion of the Court of Appeals, *supra,* p. 11 (See Appendix A, A. 1).

result of an one-party transaction without any deception or fraud practiced upon another party. The District Court felt that, due to Inglis' system of issuing checks by computer, it was entirely possible (as is evidenced from the facts of this case) for one man to produce the forged checks without the necessity of involving a second party, much less fraudulently convincing a second party to issue the checks. It is evident that the Circuit Court avoided this argument when it found that "as the result of Everston's misconduct the accounting department of Inglis was defrauded into believing that the company owed a bona fide obligation to 'A.L.E. Jones'."[8] Such a view is not only in total disagreement with the findings of the District Court but it is also unsupported by the trial record.

Under the facts of the case, it was a physical impossibility for the accounting department to have been defrauded. Michael Everston picked up a batch of one hundred accounts payable distribution slips from Miss Lamothe, a clerk in the accounting department. He allegedly altered or substituted a fictitious vendor number on five slips and then handed the entire batch back to Miss Lamothe who, without opening the batch, immediately forwarded the batch to the computer. At no time were the alterations or substitutions made by Michael Everston viewed by 'any person'. His plan did not necessitate deceiving Miss Lamothe or any other employee of the accounting department; he merely utilized her to convey the altered or substituted slips to the computer. Once these slips were entered into the computer, his prior programming of the

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[8] *Id.*, at pgs. 12 and 13 (Appendix A, A. 1).

computer resulted in checks being issued to a fictitious payee (A.L.E. Jones). Since, only the computer "viewed" the slips, and a computer is not susceptible of being deceived or defrauded, then the resultant checks could not possibly have been the product of a fraud.

Since the Court of Appeals premised its holding on the existence of two parties and the reliance by one on fraudulent misrepresentations of the other, which as the preceding facts demonstrate could not have possibly existed,[9] then the District Court was correct in its view that the computer, "like a checkwriting machine or a ball point pen"[10], was simply an instrument utilized by Michael Everston to issue checks. Furthermore, as Inglis did not give Everston the authority to issue checks, he clearly acted outside the scope of his authority when he compelled the

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[9]Therefore, the Court of Appeals' reliance on *Lemke v. United States*, 211 F.2d 73 (9 Cir.), *cert. denied*, 347 U.S. 1013 (1954), is unfounded. *Lemke* presents a classic two party situation where the manager of a cafeteria attempted to deceive his bookeeper into issuing a check upon phony invoices. Clearly, such a factual situation is inapposite to the one-party transaction at bar wherein a computer is singlehandedly compelled to issue checks to a fictitious payee.

Additionally, the Court of Appeals' attempt to distinguish *In Re Court De Toulouse Lautrec*, 102 F. 878 (7 Cir. 1900), from the instant case is also in error since the Court of Appeals in declaring that Inglis, not Michael Everston, issued the checks once again erroneously assumes a two-party transaction.

[10]Opinion of the District Court, *supra*, p. 11 (Appendix B, A. 13).

computer to issue checks. "By executing documents without authority in such a way that they appeared to be the solemn act of his principal, Everston committed forgery,"[11] and therefore, the five checks payable to 'A.L.E. Jones' are forgeries and not subject to prosecution under 18 U.S.C. 2314 and 18 U.S.C. 2315.

CONCLUSION

In that the issue presented herein is a novel one and likely to appear with frequency in the future, and since it is evident that the Court of Appeals did not confront several crucial arguments made by the District Court, Petitioner respectfully prays that this Honorable Court issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

GERALD A. KROOP

Attorney for Petitioner

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[11]*Id.*, at p. 15 (Appendix B, A. 13).

For decisional support of this proposition, *see Ex Parte Hibbs*, 26 F.421, 432 (D. Ore. 1886); *also Quick Service Box Co. v. St. Paul Mercury Ind. Co.*, 95 F. 2d 15, 17 (7 Cir. 1938).

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 76–1815

UNITED STATES OF AMERICA,
Appellant,

versus

AMY EVERSTON JONES,
Appellee.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
R. Dorsey Watkins, District Judge.

Argued December 10, 1976 Decided April 12, 1977.

Before WINTER and CRAVEN, Circuit Judges,
and FIELD, Senior Circuit Judge.

Robert A. Rohrbaugh, Assistant United States Attorney
(Jervis S. Finney, United States Attorney on brief) for
Appellant. No argument for the Appellee.

FIELD, Senior Circuit Judge:

A ten-count indictment was returned against Amy Everston Jones, charging her with five counts of transporting in interstate or foreign commerce securities[1] valued at more than $5,000.00, knowing the same to have been "stolen, converted or taken by fraud" in violation of 18 U.S.C. § 2314; and five counts of selling or receiving these same securities knowing them to have been stolen, unlawfully converted or taken by fraud, in violation of 18 U.S.C. § 2315. The defendant moved to dismiss the indictment, contending that the securities involved in the case were forgeries and thus excluded by the limiting language of sections 2314 and 2315.[2] The district court agreed with the defendant and dismissed the indictment.[3] The Government has appealed.[4]

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[1] The securities here were checks and fall within sections 2314 and 2315. *See* 18 U.S.C. § 2311.

[2] The limiting language of section 2314, basically mirrored in section 2315, provides that:

> "This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country."

[3] United States v. Jones, 414 F. Supp. 964 (D. Md. 1976).

[4] The Government's right to appeal is well established. *See* 18 U.S.C. § 3731. *See also* Serfass v. United States, 420 U.S. 377, 387 (1975); United States v. Mann, 517 F.2d 259, 266 (5 Cir. 1975), *cert. denied*, 423 U.S. 1087 (1976).

The facts, as presented by the Government, were not basically contested by the appellee and "[f]or the purposes of [the motion to dismiss], it [was] not disputed that these checks were 'stolen, converted or taken by fraud'."[5] Accordingly, if the securities were not excluded by the limiting paragraphs of sections 2314 and 2315, the acts committed by Jones would constitute indictable offenses.

This is a case of computer abuse,[6] involving the input[7] into a computer facility of allegedly altered accounts payable data. The computer crime was perpetrated against a Canadian company, Inglis, Limited, which is a subsidiary of

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[5] 414 F. Supp. at 965. Unfortunately, the appellee failed to respond to the Government's appeal of the indictment's dismissal. We therefore assume that the facts are stipulated for the purposes of this appeal and note that there does not exist a double jeopardy problem in the appeal of a case wherein the defendant stipulates facts solely for the purpose of attacking the validity of the indictment. *See* United States v. Pecora, 484 F.2d 1289, 1293 (3 Cir. 1973).

[6] Criminal acts in the use of computers is rapidly increasing. *See* D. Parker, Crime by Computer (1976); R. Farr, The Electronic Criminals (1975); S. Liebholz and L. Wilson, User's Guide to Computer Crime 23 (1974); D. Parker, S. Nycum & S. Oura, Computer Abuse (Stanford Research Inst. 1973); Allen, Embezzler's Guide to the Computer, 53 Harv. Business Rev. 79 (July 1975); 88 Newsweek 58 (Aug. 9, 1976).

[7] "Input refers to data capture, e.g., keypunching, optical character recognition, and the entry of the data into the system in machine-readable form. The possible abuses included in this function are omission of documents, creation of entirely false records, and the altering of amounts, names, and the like, on otherwise authentic documents." Nycum, Computer Abuses Raise New Legal Problems, 61 A.B.A.J. 444, 446 (Apr. 1976).

Whirlpool Corporation, a United States corporation. It specifically involved the issuance of five checks to one "A.L.E. Jones"[8] which should have been issued to Whirlpool. It is the Government's theory that the appellee transported or caused these checks to be transported from Canada to Maryland;[9] and then disposed of the checks when they arrived in Maryland.[10]

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[8] " 'A.L.E. Jones' appears to be the true name of the defendant." 414 F. Supp. at 965, n.2.

[9] Count One of the indictment is an example of the alleged section 2314 violations:

On or about September 12, 1975, in the State and District of Maryland,

AMY EVERSTON JONES,

did willfully and knowingly transport and cause to be transported in interstate and foreign commerce from Canada to the State of Maryland, securities and money which were stolen, converted and taken by fraud, to-wit, a check # 47456 in the amount of $11,138.04 payable to A.L.E. Jones, drawn on the account of Englis (sic) Limited, then knowing the same to have been stolen, converted and taken by fraud.

[10] Count Six of the indictment is illustrative of the section 2315 violations:

On or about the 12th day of September, 1975, in the State and District of Maryland,

AMY EVERSTON JONES,

did receive, conceal and dispose of certain securities and money that is, a check # 47456 in the amount of $11,138.04, payable to A.L.E. Jones, drawn on the account of Englis (sic) Limited, which were moving as, were part of, and constituted interstate and foreign commerce from Canada to the State of Maryland, knowing the same to have been stolen, unlawfully converted and taken.

An understanding of Inglis' accounting system is necessary to explain the scheme devised by the appellee and her cohort, one Michael Everston, who was the supervisor of Inglis' accounts payable department. When payments are made to Inglis' vendors the supporting documents (invoices and evidence of receipt of goods) are matched in the accounts payable department by the invoice audit clerks. These clerks then attach an accounts payable distribution slip to the supporting documents. At the accounts payable distribution slip level, the clerks record (1) the invoice number, (2) the vendor and/or supplier number, and (3) the amount of the invoice. The clerks then initial as to the recording of that data. The accounts payable distribution slip is attached to the documents to facilitate the preparation and the collection of the data on the supporting documents. The invoice audit clerks then forward the documents to another accounts payable clerk who logs and records the voucher or the accounts payable number. The documents are then transferred to the data processing area where receipt of the documents is noted and they are sent to a key punch operator who sets up cards for the documents. The papers are then picked up by a data control clerk who takes them to a production area for computer processing. Once fed into the computer, it then produces a report called a balancing report which is used to identify all of the invoices in a particular batch. The totals which appear on the balancing report are compared to a taped total which is attached to the group of documents, and this total is then compared against a log maintained by the data processing area. The documents are then sent back to the accounts payable department for a further verification of their accuracy. After the data is entered into the computer, an order is given to the computer to print-out checks, complete with facsimile signatures, payable to the order of the designated payee.

According to the government's testimony the appellee's accomplice, Everston, directed an accounts payable clerk to set up documents under the name of "A.L.E. Jones" which

included a vendor number "98844". He then altered Whirlpool accounts payable documents by changing Whirlpool's vendor number "99900" to "98844" to correspond to the "A.L.E. Jones" account. Through a process of personally reviewing the groups of accounts payable documents, Everston, was able to store these altered documents in the Inglis computer. Ultimately, the computer issued checks payable to the account of "A.L.E. Jones" which should have been paid to Whirlpool Corporation. The five checks thus issued resulted in over $130,000.00 being paid to the "A.L.E. Jones" account. Upon receipt of the checks in Maryland the appellee deposited them in a specified account to her credit.

The sole issue is whether the alteration of accounts payable documents fed into a computer which resulted in the issuance of checks payable to an improper payee constituted a "falsely made, forged, altered, counterfeited or spurious" security within the meaning of the exclusionary clauses of sections 2314 and 2315 of Title 18.

In considering the phrase "falsely made, forged, altered, or counterfeited" in the statutory sections the district court correctly noted that the terms "are substantially synonymous and refer to the crime of forgery. *Greathouse v. United States*, 170 F.2d 512, 514 (4 Cir. 1948)."[11] We also agree with the district court's conclusion that the term "forgery" should be viewed in the light of its common law meaning:

> "A forged writing was defined in *Greathouse* as one 'which falsely purports to be the writing of another person than the actual maker.' *Greathouse, supra*, at 514. It seems apparent from the sources relied upon that this was intended to express the meaning of forgery as it is known at common law.

[11] 414 F. Supp. at 966-67.

> Furthermore, the Supreme Court defined what it termed 'the concept of "federal" forgery' as being no broader than its common law counterpart, in the absence of some contrary indication in the statute or legislative history. *Gilbert v. United States*, 370 U.S. 650, 655, * * * (1962). Although the Court was there referring specifically to 18 U.S.C. § 495, the construction of § 2314 in *Greathouse* was noted with approval; *Gilbert, supra*, at 657 * * *. The area of consideration in this case is thus circumscribed by what would have been a forgery at common law.[12]

However, we disagree with the district court's conclusion that the acts committed by Everston constituted common law forgery. The Supreme Court has noted that "'[f]orgery, or the *crimen falsi*, * * * may with us be defined (at common law) to be, 'the fraudulent making or alteration of a writing to the prejudice of another man's right' * * *. 4 Blackstone, Commentaries (Christian ed. 1809), 247-248." *Gilbert v. United States*, 370 U.S. 650, 657 n.10 (1962). Significantly then, "[a]n essential element of the crime of forgery is *making* the false writing * * *." *United States v. Maybury*, 274 F.2d 899, 903 (2 Cir. 1960) (emphasis added). *See Carr v. United States*, 278 F.2d 702, 703 (6 Cir. 1960), ("The word 'forgery' is commonly defined as the false making or materially altering, with intent to defraud, or any writing, which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability."); *Marteney v. United States*, 216 F.2d 760, 763 (10 Cir. 1954), *cert. denied*, 348 U.S. 953 (1955), ("The words [falsely made and forged] relate to genuineness of execution and not falsity of content."[13]

[12] *Id.*, at 967.

[13] *See also* R. Anderson, 2 Wharton's Criminal Law and Procedure, §634 at 412-13 (1957); Cunningham v. United States, 272 F.2d 791 (4 Cir. 1959); United States v. Smith, 262 F. 191 (D. Ind. 1920).

In the present case, the district court was of the opinion that Everston, in fact, *made* a false writing because "the individual who drafted the instrument in a practical sense was Everston, although he employed the computer as the instrumentality by which the checks were physically drawn."[14] We think, however, that the acts of Everston did not constitute the *making* of a *false writing*, but rather amounted to the creation of a writing which was genuine in execution but false as to the statements of fact contained in such writing.[15] The distinction is critical to the sufficiency of the indictment.

> "In criminal cases the great weight of authority holds false statements in or fraudulent execution of otherwise valid instruments not to be forgery within its common law or unexpanded meaning. *Greathouse v. United States*, 4 Cir., 170 F.2d 512, 514; *United States v. Brown*, 2 Cir., 1957, 246 F.2d 541; *Marteney v. United States*, 10 Cir. 1954, 216 F.2d 760; 41 A.L.R. 229, supplemented, 49 A.L.R. 1529, 51 A.L.R. 568."

First National Bank of South Carolina v. Glenn Falls Ins. Co., 304 F.2d 866, 870 n.1 (4 Cir. 1962).

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[14] 414 F. Supp. at 968.

[15] There is, of course, a valid and recognized distinction between the false making of a writing and the making of a false writing. *See* United States v. Davis, 231 U.S. 183 (1913); United States v. Staats, 8 How. 41, 49 U.S. 40 (1850); Wright v. United States, 172 F.2d 310 (9 Cir. 1949); United States v. Mulligan, 59 F.2d 200 (2 Cir. 1932).

The district court was of the opinion that the facts did not warrant the conclusion that false statements appeared on the face of the checks issued by Inglis to "A.L.E. Jones".[16] We cannot agree. The checks state that the designated amount is payable "to the order of A.L.E. Jones," and implicit in such an unconditional order was the existence of an obligation running from Inglis, Limited, to the payee. There was, of course, no such obligation, but as the result of Everston's misconduct the accounting department of Inglis was defrauded into believing that the company owed a bona fide obligation to "A.L.E. Jones" and, accordingly, issued a *genuine instrument containing a false statement of fact as to the true creditor.*[17]

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[16] The district court stated that "[t]he only words on the checks that can in any way be characterized as false are 'A.L.E. Jones,' and those words make no assertion, either true or false; their only falsity lies in the fact that their presence on the instruments was unauthorized." 414 F. Supp. at 968. As noted above, we cannot agree with the district court's view on this point.

[17] Although the district court correctly notes that reference to the "imposter doctrine" as found in the civil arena would be "irrelevant in the context of a criminal prosecution * * *." 414 F. Supp. at 971 n.9, we think the imposter/forger distinction is helpful in deciding that the facts of the present case do not amount to forgery. *See* Atlantic National Bank of Jacksonville v. United States, 250 F.2d 114 (5 Cir. 1957). *See also* United States v. Bank of America Nat. Trust & Sav. Ass'n, 274 F.2d 366 (9 Cir. 1959); United States v. Union Trust Co., 139 F. Supp. 819 (D. Md. 1956); Annot., 81 A.L.R.2d 1365 (1962) (The annotation draws an interesting distinction between the "imposter/forger" rule and the "defrauder/forger" rule. The case at bar involves the latter doctrine. See 81 A.L.R.2d at 1368.

We recognize that, at common law, one need not have physically counterfeited an instrument to be convicted of forgery, *see In re Count De Toulouse Lautrec*, 102 F. 878 (7 Cir. 1900).[18] However, we note that in those circumstances the issuance of the instrument purporting to have legal efficacy *"was neither intended nor issued as such by the purported maker."* *Id.* at 881. (emphasis added). In

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[18] The Seventh Circuit has capsulated the factual contours of its Lautrec decision thusly:

> In *Lautrec* a printer retained as samples of his work several interest coupons, the originals of which had been validly issued in connection with certain corporate bonds. The petitioner obtained some of these samples and, although knowing that they were not genuine obligations of the issuing corporations, negotiated them. The petitioner argued that he was not guilty of common law forgery because: 1) the coupons had been lawfully printed and retained; 2) he had obtained the coupons legitimately from a person with authority to distribute them; and 3) he was able to negotiate the coupons without altering them in any way. The court rejected this argument, concluding that forgery was committed when
>
> > the accused adopted the otherwise innocent work of the printer for the purpose of defrauding purchasers by selling as genuine an instrument which purported to have legal efficiency, but was neither intended nor issued as such by the purported maker.
>
> 102 F. at 881. *See also Gilbert, supra*, 370 U.S. at 658, * * * (where " 'falsity lies in . . . the genuineness of execution,' it is . . . forgery").

United States v. Johnson, 504 F.2d 622, 625-26 (7 Cir. 1974) (footnotes omitted).

the present case, the purported maker, Inglis, *issued* the check and "the instrument [was] of such nature that if not voidable for the defendant's fraud it could have some legal or prejudicial effect upon the signer." R. Anderson, 2 Wharton's Criminal Law and Procedure § 611, at 378 (1957). We conclude that the crime herein was a fraud or false pretense, and not forgery.

Decisional support for the proposition that the alteration of supporting documents giving rise to the issuance of a bona fide instrument amounts to the crime of false pretenses is found in the Ninth Circuit's decision in *Lemke v. United States*, 211 F.2d 73 (9 Cir.), *cert. denied*, 347 U.S. 1013 (1954). In *Lemke* the court was faced with a situation wherein the manager of a cafeteria, who had previously purchased vegetables from a truck farmer, attempted to have the farmer make out invoices showing the sale to the cafeteria of vegetables which had never been delivered. The manager planned to sign and approve the slips and present them for payment. Under such circumstances the invoices were treated as vouchers authorizing payment to the sellers. Thus, "in ordinary course, the bookkeeper would at the end of the month add the amounts of these vouchers and write a check for the total and deliver it * * *." 211 F.2d at 74. The Ninth Circuit held that

> "[t]he evidence here was sufficient to show that Lemke had put in motion a procedure which, had it not been interrupted in consequence of the intervention by the officers, would have resulted in $60 being paid by check to Elbert for vegetables never delivered or intended to be delivered. Had Lemke's plan been consummated the Civilian Mess would have been defrauded in consequence of Lemke's false pretenses."

Id. at 75. Just as the facts before us indicate that the alteration of supporting documents generated a valid security, so also in *Lemke* the falsely made invoices would have resulted in the issuance of a valid check. In each instance the pattern of conduct was designed to defraud the company through the use of false pretenses.

Since we conclude that the checks did not fall within the exclusion of the statutes as forgeries, the order of the district court dismissing the indictment must be reversed.

REVERSED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA
v.
AMY EVERSTON JONES

Criminal No. W-75-0854

MEMORANDUM OPINION AND ORDER

Dated: May 13, 1976

Jervis S. Finney, United States Attorney and Robert A. Rohrbaugh, Assistant United States Attorney, for the Government.

Gerald A. Kroop, Esquire, for Defendant.

WATKINS, District Judge.

Defendant Amy Everston Jones is charged in a ten-count indictment with transportation in interstate commerce of stolen, converted, or fraudulently obtained securities valued at more than $5,000 in violation of 18 U.S.C. §2314; and with receiving, selling, or disposing of those same securities knowing them to have been stolen, converted, or taken by fraud, in violation of 18 U.S.C. §2315.

The securities at issue are five checks,[1] payable to the order of "A.L.E. Jones,"[2] drawn on the Royal Bank of Canada

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[1] Checks are included in the definition of "securities" for purposes of §§2314 and 2315; *see*, 18 U.S.C. §2311.

[2] "A.L.E. Jones" appears to be the true name of the Defendant.

against the account of Inglis, Limited, a Canadian appliance firm. The government alleges that Defendant transported these checks from Canada to Maryland (or that they were sent to her) and that the checks were then deposited in a Maryland bank account.

For purposes of this motion, it is not disputed that these checks were "stolen, converted or taken by fraud." Defendant contends, however, that the Inglis securities are not genuine and are instead forgeries of checks of a foreign corporation, to which §§2314 and 2315 expressly do not apply. Defendant has, therefore, moved that the instant indictment be dismissed.[3]

Except for minor differences in punctuation, the exclusionary language referring to foreign securities is the same in the two sections. Section 2314 provides, in pertinent part, as follows:

> This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

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[3] At the time the instant motion was filed it appeared to be Defendant's contention that the exclusionary language would have applied even to bar a prosecution arising from a transaction involving genuine foreign securities. Such an assertion is flatly refuted by the plain language of the statute and also by the evident purpose of the legislation, which was to avoid duplication with other statutory provisions dealing specifically with foreign forgeries. *See*, generally, United States v. Galardi, 476 F.2d 1072, 1077-1078 (9 Cir. 1973), *reh. denied, cert. denied* 414 U.S. 839, 856. At the hearing, however, Defendant argued that the securities at issue were forged.

Under most circumstances, the issue of genuineness of instruments poses little difficulty; certainly there is no dearth of authority as to what constitutes a forgery at common law and for purposes of the various federal forgery statutes. The circumstances of the instant case, however, are not the usual ones. The Inglis checks were printed by a computer, complete with authorized facsimile signatures, and, it is alleged, were the direct result of tampering by an Inglis employee with data records stored in the computer and with payment data inserted into the computer. Whether or not they can be characterized as "falsely made, forged, altered, counterfeited or spurious" poses an interesting question and one which the Court considers novel in the case law.

The unusual nature of this case requires that the facts be recited in some detail.

Inglis, Limited, is a Canadian company which routinely purchases substantial quantities of household appliances from Whirlpool Corporation, a United States manufacturer. The accounts payable generated by these purchases are processed through a rather complex system at Inglis which in part involves manual accounting techniques but which culminates in the issuance of checks by means of automated electronic data processing equipment.

According to Edward McCormack, comptroller and assistant treasurer of Inglis, the system is initiated by the arrival of invoices and other documents (including warehouse receipts, customs clearing documents, and shipping manifests) associated with a particular purchase or shipment. These materials are collected and matched with records of orders. The information needed to process payment of the account is then extracted from the various documents and written down on an "accounts payable distribution slip." This information includes the invoice number, the date, the amount due, and a vendor code number. The vendor code number is used to identify the payee to the computer, which issues the actual check.

The data thus collected are verified within the accounts payable department, and batches of documents, with verified accounts payable distribution slips attached, are then sent to the keypunch operators. The keypunch operators do not check any of the information given them; they merely take the information necessary to process the payment from the accounts payable distribution slip and prepare it for entry into the computer by transferring it to a computer keypunch card. The data thus processed are entered into the computer and are retained in the computer memory as "open item entries." Periodically, the computer is commanded to execute a "check run" by printing checks for all entries on the "open item" list. The checks are automatically printed by the computer in fully negotiable form, complete with facsimile signatures.

According to the theory advanced by the government, and not disputed by the Defendant for purposes of this motion alone, the checks in question resulted when an alleged confederate of the Defendant, one Michael Everston, tampered with certain of the data being processed through the system described above. At the time of the alleged tampering, Everston was supervisor of the accounts payable department. As such, he was familiar with all aspects of the system, including the verification techniques employed to assure the proper payment of accounts payable.

The first step in the scheme alleged by the government was the creation of an improper vendor code listing in the computer which would have rendered the computer receptive to the insertion of false data at a later time. An exhibit filed at the hearing suggests that this was done by means of an order to change vendor codes and addresses issued on September 3, 1975, allegedly at the direction of Michael Everston. That order contained an instruction to create a new vendor code, 99894, to correspond to "A.L.E. Jones, P. O. Box 123." Creation of this code within the computer's memory ensured that any order to pay code 99894, if properly entered into the computer, would automatically result in the issuance of a check payable to the order of "A.L.E. Jones."

The second step in the scheme involved the entry into the computer of data relating to specific checks to be issued to A.L.E. Jones. According to the government, Everston's supervisory position enabled him to obtain batches of Whirlpool invoices with attached accounts payable distribution slips after the documents had been verified as described above. Then, the government alleges, Everston prepared accounts payable distribution slips like those which had been prepared in his department but bearing the vendor code "99894" instead of the proper vendor code corresponding to Whirlpool.

As the final element in the scheme, the documents and accounts payable distribution slips were allegedly forwarded to keypunch. The data on the accounts payable distribution slips were routinely transferred to keypunch cards. When directed, the computer read the data from the keypunch cards and stored the information in its memory. In due course, when commanded to process a check run, the computer automatically printed checks payable to the order of "A.L.E. Jones" which had been intended to be made payable to the order of Whirlpool Corporation. The government then alleges that the "A.L.E. Jones" checks were sent or given to the Defendant, who, it is charged, deposited them in a bank account in Maryland.

Assuming all of this to be true for purposes of the instant motion only, the question is whether or not checks thus produced can properly be the subject matter of a prosecution under §§2314 and 2315.

It has long been settled in this circuit that the terms "falsely made, forged, altered, or counterfeited" as used in §2314 are substantially synonymous and refer to the crime of forgery. *Greathouse v. United States*, 170 F.2d 512, 514 (4 Cir. 1948). Since §2315 was enacted at the same time and as part of the same law, the National Stolen Property Act, it seems clear that a single construction would apply to essentially identical language in the two sections. Furthermore, it would seem that

the term "spurious" must likewise be considered *ejusdem generis,* since a contrary construction would require the Court either to hold that the exclusionary provisions excises from the statutes that which was not included, or to regard the term "spurious" as surplussage.

A forged writing was defined in *Greathouse* as one "which falsely purports to be the writing of another person than the actual maker." *Greathouse, supra,* at 514. It seems apparent from the sources relied upon that this was intended to express the meaning of forgery as it is known at common law. Furthermore, the Supreme Court defined what it termed "the concept of 'federal' forgery" as being no broader than its common law counterpart, in the absence of some contrary indication in the statute or legislative history. *Gilbert v. United States,* 370 U.S. 650, 655 (1962). Although the Court was there referring specifically to 18 U.S.C. §495, the construction of §2314 in *Greathouse* was noted with approval; *Gilbert supra,* at 657. The area of consideration in this case is thus circumscribed by what would have been a forgery at common law.

In contending that the Inglis checks were forgeries, the Defendant has relied principally on those cases which have held that one who obtains a stolen instrument in blank and later completes it, has committed a forgery. *See, e.g., United States v. Galardi,* 476 F.2d 1072 (9 Cir. 1973), *cert. denied* 414 U.S. 839, 856; *United States v. Brown,* 417 F.2d 1068 (5 Cir. 1969); *United States v. Franco,* 413 F.2d 282 (5 Cir. 1969); and *United States v. Ketchum,* 327 F. Supp. 768 (D. Md. 1971). Such a scheme would ordinarily constitute forgery, even though the blank is filled with the name of a real person and even if the thief-forger uses his or her own name. *Ketchum, supra,* at 770; *but see, United States v. Brown,* 344 F. Supp. 291, 294 (E.D. Va. 1972).

The government urges two alternative theories. First, it is contended, even conceding that the substitution of "A.L.E. Jones" for Whirlpool constituted a false writing, the falsity was

in the meaning rather than in the making of the instrument. Thus, the government seeks to bring the instant case within the rule stated by Wharton and quoted by the government in its brief that:

> . . . when a person writes a letter or fills out a loan application which he signs with his own name intending that it be accepted as his writing, he is not guilty of forgery because statements contained therein are false and their falsity was known to him. The better view, and that supported by the majority opinion, ~~is that supported by the majority opinion,~~ is that under the common law under statutes defining forgery in substantially the language of the common law definitions, the genuine making of an instrument for the purpose of defrauding does not constitute the crime of forgery. In other words, the term 'falsely' as applied to making or altering a writing in order to make it a forgery, does not refer to the contents or the tenor of the writing or to the facts stated therein, but implies that the paper or writing is not genuine, that in itself it is false or counterfeit.

2 Wharton's Criminal Law, Section 634, pp. 412-413 (1957). In essence the government argues that the documents in question are genuine, but contain false statements. Furthermore, the government argues, such "genuine" documents would not have been regarded as forgeries at common law even though their execution might have been procured by fraud, citing the following language:

> According to settled authority, it is not forgery to obtain a person's signature to an instrument by means of false and fraudulent representations as to its contents, or as to the purpose for which the instrument is to be

> used.[4] Nor is it forgery to fraudulently procure a person's signature to an instrument which has previously been altered without his knowledge.

Clark and Marshall, *A Treatise on the Law of Crimes*, Section 12.34, p. 961 (1967) (footnotes and citations omitted in the government's brief).

Neither the doctrine advanced by the Defendant nor those put forward by the government are apposite to the case at bar.

The cases cited by the Defendant all involve the fraudulent making or alteration of an instrument by one who is a stranger to the instrument. In the instant case, however, the individual who drafted the instrument in a practical sense was Everston, although he employed the computer as the instrumentality by which the checks were physically drawn. Everston, unlike the defendants held to have committed forgery in *Ketchum* and like cases, was authorized for certain purposes to direct the entry of data into the computer and thus initiate the drafting of checks bearing authorized Inglis signatures; although, if the government's theory is correct, Everston was in no way authorized to effect the creation of the particular checks at issue.

Nor do the theories urged by the government provide an answer. The government's contention that the instruments, if genuine, cannot be considered forged merely because they contain false information is correct: *see, Marteney v. United States*, 216 F.2d 760, 763 (10 Cir. 1954). Where the falsity in an instrument is in its content, rather than in the manner of making, the instrument is not a forgery. *Gilbert, supra*, at 658.

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[4] In fact, the matter is not settled among the American decisions, although the better and perhaps the majority view seems to be in accord with Clark and Marshall. *See, Wharton, supra*, §635 at 415.

This expression, however, merely restates the venerable rule that a lie will not be considered forgery at common law merely because it is written down; it retains its character as fraud or misrepresentation. For example, it is settled that there is no common law forgery where an agent, in executing a document purportedly authorized by his principal, misrepresents the extent of his authority on the face of the instrument. *Gilbert, supra. See, also, Cunningham v. United States*, 272 F.2d 791, 793-794 (4 Cir. 1959); and *Selvidge v. United States*, 290 F.2d 894, 895 (10 Cir. 1961). The application of this doctrine, however, presupposes a statement *on the face of the instrument* which is false as to its meaning, and there is no such statement with respect to the Inglis checks.[5] The only words on the checks that can in any way be characterized as false are "A.L.E. Jones," and those words make no assertion, either true or false; their only falsity lies in the fact that their presence on the instruments was unauthorized.

But even assuming that the mere presence of the payee's name on the instrument can in these circumstances be considered an "assertion" capable of characterization as true or false, a premise this Court does not accept, the rule as to falsity of content has no application where the documents were in fact falsely made.

With respect to false making, the government's principal authority is the quotation from Clark and Marshall noted above. That language cannot be applied to the facts of the instant case.

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[5] Quite conceivably the accounts payable distribution slips were false as to meaning, rather than making, and could not themselves be considered forgeries. However, the Court is concerned in the instant case only with the checks. In any event, forgeries or not, the slips could not properly be the basis of a charge under §§2314 and 2315 since there is no nexus with interstate commerce as to them.

As is apparent from the case authority cited in their treatise, Clark and Marshall were referring to situations involving two parties and the reliance by one on fraudulent misrepresentations of another.[6] As with the lie set to writing which does not thereby become forgery, that which is essentially false pretenses or misrepresentation retains its character as such.

In the case at bar, however, there were no fraudulent misrepresentations to any second party and in fact there was no second party to be deceived.

As the government urged at the hearing, the mere fact that a computer was used to print these checks should not be permitted to confuse the matter. The computer was merely an inanimate and obedient instrumentality employed by Everston, who himself accomplished everything necessary to assure the issuance of checks to an unauthorized payee and was, as a practical matter, the drawer of the checks. Like a checkwriting machine or a ball point pen, the computer did exactly what it was told to do by its program and by the data inserted at

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[6] It is clear that the two-party situation was the subject matter of the quote from Clark and Marshall. Citation was made therein to Regina v. Chadwick (1844), 2 Moody & Robinson 545; there, the question was whether or not the Defendant had induced creditors of his principal to sign a receipt which he had fraudulently altered as to amount. In ruling that this would not have been a forgery, provided the alteration preceded the signature, Baron Rolfe referred to an earlier case in which he had considered the doctrine generally, that being Regina v. Collins (1843), 2 Moody & Robinson 461. In that case, Baron Rolfe stated that it would not be forgery fraudulently to induce a person to execute an instrument based on a misrepresentation as to its contents because, if such a charge were permissible, "any party might be indicted for forgery who prevails on a man to execute a deed by misrepresenting its legal effect." Regina v. Collins, *supra*, at 466.

Everston's command. Likewise, the keypunch operator's function was to follow instructions exactly and to punch into computer cards exactly the information given. It was only by means of this mechanical process that the computer could digest the information; and it is fair to say that the operator, acting routinely, functioned in a sense as an adjunct of the machine. At most, the computer operator was the innocent agent of Everston.

These facts, therefore, describe a one-party transaction without any of the deception described by Clark and Marshall. That deception was rendered unnecessary by the seemingly efficient system devised at Inglis which made it possible for one man to accomplish the entire transaction in essence single-handedly.

That being the case, it seems plain that the checks fit within the definition of forgery. It has long been the rule that an agent may commit forgery by executing an instrument in disobedience of his instructions, provided that the requisite *mens rea* exists and that the documents so executed have the capacity to defraud. *Selvidge, supra,* at 895.[7]

Selvidge itself involved a false agency endorsement, as noted above. Such endorsements are now held not to be forgery. The Court noted, however, that the critical factor was the assertion on the face of the instrument that the Defendant was acting as an agent and stated that "if Selvidge had merely endorsed the name of her principal and cashed the checks

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[7] The rule can be traced at least as far as the Statute 5 Elizabeth Ch. 14 (1562-1563), which provided that the insertion of a clause into a will purporting a devise of lands without warrant or direction of the devisor is forgery even though the insertion is made in the lifetime of the testator and by the clerk authorized to draft the will. 1 Hale, *Pleas of the Crown*, Ch. 64 p. 684 (1847).

contrary to her instructions, the crime of forgery would have been complete." *Selvidge, supra,* at 895.

This "rule of general application" is in harmony with the established concept that it is "the giving [to an instrument of] a false appearance of having been executed by [the principal] which makes a man guilty of forgery." 1 Hawkins, *Pleas of the Crown,* Ch. 21 §5 at 256 (1824). In making his own unauthorized act appear to be the act of his principal, the agent commits forgery in the classical sense; he makes a "writing which falsely purports to be the writing of another." *Greathouse, supra,* at 514.

The rule has been most often expressed in the English cases. Typical is the case of *Regina v. Wilson* (1848), 2 Car. & K. 527, 175 Eng. Rep. 219 (Nisi Prius Book 6) in which a clerk was given a check that had been signed but was otherwise blank, with instructions to fill in the check to a certain amount and then to give the proceeds to one Williamson. The clerk instead filled the check out to a larger amount, cashed the check, and converted the proceeds. This was held to be forgery, fourteen judges concurring.

The rule has been stated less often, but with no less authority, in the American cases. It was recognized early in *Ex Parte Hibbs,* 26 F.421 (D. Ore. 1886). A postal employee, authorized to issue money orders when paid for, made out money orders for which no payment had been received and converted the proceeds. This was held to be forgery:

> The instruments set out in these indictments, and of which the prisoner is thereby charged with forgery, purport to be postal money orders of the United States. They were issued without authority, and contrary to the prohibition of law. They were falsely made, filled up, signed, stamped, and issued by the prisoner, as upon a state of facts which did not exist, with intent to defraud his employer, the United States. this, in my judgment, was a false making

> within the statute, and such a false making as constitutes the crime of forgery at common law. The writing is false, because it purports to be what it is not. It purports to be a money order of the United States, issued by its authority, after the receipt by its agent of the sum named therein, on the application of a real person, while in truth and in fact, it was issued without such authority and contrary to law. . .

Hibbs, supra, at 432.

See, also, Quick Service Box Co. v. St. Paul Mercury Ind. Co., 95 F.2d 15, 17 (7 Cir. 1938) (bookkeeper obtained signatures of his employer to blank checks and, in excess of authority, filled in the blanks and appropriated the proceeds; held, forgery.[8]

This situation must be distinguished, of course, from the cases that deal with agency endorsements such as *Gilbert* and *Selvidge*. The reason for the rule that false agency endorsements are not forgery is that the party who would be defrauded by such a false endorsement would not regard the endorsement as the act of the principal; instead, his reliance would be upon the

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[8]The District of Columbia Circuit had likewise declared the rule in Yeager v. United States, 32 F.2d 402 (D.C. Cir. 1929). There an employee authorized to endorse checks and deposit them to this employer's account instead endorsed the checks and pocketed the proceeds. This was held to be forgery under the rule cited in *Hibbs*. 32 F.2d at 402. It may be as later developed, and as noted in *Selvidge,* that *Yeager* was wrongly decided because the endorsement was an agency endorsement, a fact that did not come to light in the case law until some three years after *Yeager* had been decided. *See,* 290 F.2d at 896. However, *Yeager* is still authority, although perhaps no more than dictum, in support of the rule of forgery by an authorized agent.

existence of authority as evidenced by the representation of agency on the instrument. The distinction between the case where the agency is stated on the document and those, such as the case at bar, where there is no such representation and where the party to whom the instrument is given regards it as the act of the principal, is very clear. It is a "decisive circumstance which compels a different conclusion," *Selvidge, supra,* at 896. That distinction was drawn in *Selvidge* with respect to *Hibbs* and *Quick Service Box,* and was explicitly approved by the Supreme Court in *Gilbert, supra,* at 658 n. 12.

Additionally, the case at bar should be distinguished from those that involved an agent with general authority. A case nearly identical with the instant case, except for that critical factual difference, is *Regina v. Richardson,* (1860), 2 F. & F. 343, 175 Eng. Rep. 1088 (Nisi Prius Book 6). In that case, the Defendant had been employed as a clerk with authority to pay the routine expenses of the business. To that end, he was given control of the cash on hand, into which he was to pay receipts. When necessary, he was authorized generally to cash checks on that account, drawing the money himself and then using it to pay the creditors. On one occasion he cashed such a check and entered into the books a notation that he had used the proceeds to pay a creditor when, in fact, he had converted the funds. This was held not to be forgery, because the Defendant's authority was limited only by the amount in the account; rather than draw checks to the creditors, his function was to cash checks and pay over the cash. In cashing the check at issue, he quite possibly had not exceeded his authority; his crime was misappropriation of the proceeds *after* the check had been cashed, rather than forgery. 175 Eng. Rep. at 1089.

Everston, however, had no such general authority to draw checks. His authority was strictly limited by the parameters of the accounts receivable, which were to be satisfied by check rather than out of any cash fund over which Everston had control. Unlike the clerk in Richardson, he clearly acted outside the scope of his authority. By executing documents without

authority in such a way that they appeared to be the solemn act of his principal. Everston committed forgery, given, of course, that the government's allegations are true.[9]

Since, under the theory of this transaction advanced by the government, the checks were "forged. . . securit[ies]. . . issued by . . . a bank or corporation of any foreign country," prosecution under §§2314 and 2315 is improper, and the indictment must be dismissed.

Accordingly, it is this *13th* day of May, 1975, by the United States District Court for the District of Maryland, ORDERED:

(1) That the motion of the Defendant to dismiss the indictment BE, and the same hereby IS, GRANTED;

(2) That the indictment in the instant case BE, and the same hereby IS, DISMISSED; and

(3) The Clerk of the Court is directed to send copies of the foregoing Memorandum Opinion and Order to Gerald A. Kroop, Esquire, and to Jervis S. Finney, United States Attorney for the District of Maryland.

/s/ R. Dorsey Watkins,
United States District Judge

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[9] In holding these checks to be forgeries, the Court expresses no opinion as to any possible questions of civil liability. Those questions involve considerations which are irrelevant in the context of a criminal prosecution, such as any possible fault, estoppel, or application of the impostor rule. United States v. Union Trust Co., 139 F.Supp. 819, 820 (D. Md. 1956).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA
v.
AMY EVERSTON JONES

Criminal No. W-75-0854

ORDER

Pursuant to the Memorandum Opinion and Order filed May 13, 1976, in the above entitled case, it is ORDERED this 17th day of May 1976 that the indictment be and the same is hereby DISMISSED.

/s/ R. Dorsey Watkins,
U.S. District Judge

APPENDIX C

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1. Title 18, United States Code Section 2314:

Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting – Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or

Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof–

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

2. Title 18, United States Code, Section 2315:

Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps. – Whoever receives, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of $500 or more, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been stolen, unlawfully converted, or taken; or

Whoever receives, conceals, stores, barters, sells, or disposes of any falsely made, forged, altered, or counterfeited securities or tax stamps, or pledges or accepts as security for a loan any falsely made, forged, altered, or counterfeited securities or tax stamps, moving as, or which are a part of, or which constitute interstate or foreign commerce, knowing the same to have been so falsely made, forged, altered, or counterfeited; or

Whoever receives in interstate or foreign commerce, or conceals, stores, barters, sells, or disposes of, any tool, implement, or thing used or intended to be used in falsely

making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing that the same is fitted to be used, or has been used, in falsely making, forging, altering, or counterfeiting any security or tax stamp, or any part thereof–

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

This section shall not apply to any falsely made, forged, altered, counterfeited, or spurious representation of an obligation or other security of the United States or of an obligation, bond, certificate, security, treasury note, bill, promise to pay, or bank note, issued by any foreign government or by a bank or corporation of any foreign country.
